

1 THE HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 No. CR18-092RAJ

12 Plaintiff,

13 v.

14 BERNARD ROSS HANSEN and DIANE
15 RENEE ERDMANN,

16 ORDER ON DEFENDANTS'
17 MOTION TO EXCLUDE CERTAIN
18 EVIDENCE RELATED TO THE
19 SALE OF MS. ERDMANN'S
20 PERSONAL COLLECTION OF
21 PRECIOUS METALS

22 Defendants.

23 THIS MATTER comes before the Court upon defendants' Motion to Exclude
24 Certain Evidence Related to the Sale of Ms. Erdmann's Personal Collection of Precious
25 Metals (Dkt. # 290), the government's response (Dkt. # 295), and the files and pleadings
26 herein. The Court **DENIES** defendants' motion. Unless stated otherwise, the Court's
27 ruling applies equally to the defendants, and each party is expected to advise their clients
and witnesses of the Court's ruling.

28 Through this motion, defendants seek to exclude evidence about defendant Diane
29 Renee Erdmann's "sale of her personal collection of precious metals to various precious
30 metal and coin dealers." Dkt. # 290 at 1. Defendants seek to exclude this evidence under
31 Federal Rules of Evidence 401, 402, and 403. *Id.* First, they argue that the evidence is
32 irrelevant and inadmissible under Federal Rules of Evidence 401 and 402. According to
33 defendants, the sale of Ms. Erdmann's personal precious metals should be excluded

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1 because the metals sold “belonged to her and her alone,” and her use of her own funds is
2 irrelevant to “whether defendants engaged in mail or wire fraud.” *Id.* at 1, 5. Second,
3 defendants argue that even if such evidence is relevant, its admission would be unduly
4 prejudicial because a “jury may believe that Ms. Erdmann was absconding with customer
5 property, or improperly using NWTM assets, as opposed to selling her personal
6 collection.” *Id.* at 6.

7 The government opposes defendants’ motion for three reasons. First, it argues that
8 the motion is untimely. It says that the motion, filed a day before trial, was filed long
9 after the parties’ motion *in limine* were due. Dkt. # 295 at 4-5. Second, the government
10 argues that the Court already decided this issue when it ruled on a previous motion *in*
11 *limine*. *Id.* at 5. Finally, the government says that the motion fails on the merits:
12 evidence of Ms. Erdmann’s sale of her personal precious metals is relevant and not
13 unfairly prejudicial because it is probative of the fraudulent scheme alleged by the
14 government. *Id.* at 7-10.

15 Parties may file motions *in limine* before or during trial “to exclude anticipated
16 prejudicial evidence before the evidence is actually offered.” *Luce v. United States*, 469
17 U.S. 38, 40 n.2 (1984). To decide motions *in limine*, the Court is generally guided by
18 Federal Rules of Evidence 401 and 403. Specifically, the Court considers whether
19 evidence “has any tendency to make a fact more or less probable than it would be without
20 the evidence” and whether “the fact is of consequence in determining the action.” Fed.
21 R. Evid. 401. However, the Court may exclude relevant evidence if “its probative value
22 is substantially outweighed by a danger of one or more of the following: unfair prejudice,
23 confusing the issues, misleading the jury, undue delay, wasting time, or needlessly
24 presenting cumulative evidence.” Fed. R. Evid. 403.

25 The Court denies defendants’ motion: evidence of Ms. Erdmann’s sale of her
26 personal precious metals is indeed relevant, and its admission would not be unfairly
27 prejudicial. In its indictment, the government expressly alleges that Ms. Erdmann used,

1 for her “personal benefit,” “various customer-owned metal that was supposed to be held
2 for the benefit of NWTM customers.” Dkt. # 1 ¶ 47. For example, the government
3 accuses Ms. Erdmann of selling “more than \$700,000 worth of precious metals” and
4 “us[ing] the proceeds for the benefit of herself” and defendant Hansen. *Id.* Evidence that
5 Ms. Erdmann sold her personal metals, which may have contained customer-owned
6 metal, would make that allegation more probable. Further, as explained in a previous
7 order, the fact is of consequence: “wire fraud prosecution includes not only the specific
8 executions of the scheme alleged . . . , but also the overall scheme.” Dkt. # 258 at 4.
9 “[E]vidence of transactions beyond those charged is admissible as proof of the overall
10 scheme to defraud.” *Id.* The evidence is thus relevant and admissible under Federal
11 Rules of Evidence 401 and 402.

12 The evidence is also not unfairly prejudicial. Defendants argue that the evidence
13 would mislead the jury into believing that Ms. Erdmann was “improperly using NWTM
14 assets, as opposed to selling her personal collection.” Dkt. # 290 at 6. Throughout their
15 motion, defendants insist that “the items Ms. Erdmann sold are distinct from all the items
16 reported missing by the customers” and that “[t]he items Ms. Erdmann sold belonged to
17 her and her alone.” *Id.* at 1-2. But defendants’ evidence is scant. They offer testimony
18 from the bankruptcy proceeding suggesting that Ms. Erdmann is a “coin collector.” Dkt.
19 # 291-5 at 3. They offer evidence that some witnesses believed that NWTM’s storage
20 vault contained boxes containing Mr. Hansen’s (not Ms. Erdmann’s) personal things.
21 Dkt. # 291-4 at 2. And they submit a purchase order of some of the metals that she sold
22 and contend that the purchase order does not reflect “any metals purported missing by
23 any Storage Customer cited in the Indictment.” Dkt. # 290 at 3.

24 This evidence hardly shows that all the precious metals Ms. Erdmann sold were in
25 fact “hers and hers alone.” The government offers some evidence suggesting that is not
26 so. Dkt. # 295 at 7. In any event, Ms. Erdmann no doubt sold some metals, but whether
27 those metals were hers or NWTM’s customers’ is unclear. On this record, the showing of
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1 undue prejudice is low, and, given the relevance of such sales to the government's
2 allegations of fraud, the probative value is high. Thus, the evidence is admissible under
3 Federal Rules of Evidence 401, 402, and 403.

4 Because the Court denies defendants' motion on the merits, it need not reach the
5 government's timeliness arguments. Dkt. # 296 at 4-5.

6 For the foregoing reasons, the defendants' motion is **DENIED**.

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8 DATED this 8th day of July, 2021.
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The Honorable Richard A. Jones
United States District Judge